
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

SALT LAKE CITY CORPORATION, et
al.,

Plaintiffs,

v.

ERM-WEST, INC., et al.,

Defendants.

MEMORANDUM DECISION AND
ORDER DENYING CROSS-
MOTIONS FOR PARTIAL
SUMMARY JUDGMENT ON THE
ISSUE OF DAMAGES

Case No. 2:11-CV-1174 TS

This matter is before the Court on Cross-motions for Partial Summary Judgment on the issue of damages. Defendant, ERM West (“ERM”), moves the Court to order that Salt Lake City’s (the “City”) damages for ERM’s alleged breach of contract may not include remediation costs that are being paid by third parties. Plaintiff, the City, moves the Court to order that the City’s damages from ERM’s alleged breach of contract may not be limited by the City’s agreements with third parties. The Court will deny both Motions.

Under Rule 56, summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”¹ However, summary judgment is not appropriate in this instance because the parties seek a declaratory judgment on the issue of how to calculate damages.

Defendant states, “ERM is not asserting that the City’s damages should be reduced because of any claim ERM has against the City—nothing of the sort. ERM merely seeks a ruling

¹ Fed. R. Civ. P. 56(a).

on the proper measure of damages.”² ERM and the City do not seek judgment as to damages, but only seek an instruction on how to calculate damages. Summary judgment is not the appropriate vehicle to obtain such instruction.

Therefore, the Court will deny both Motions for Summary Judgment and instruct the parties to raise the damage calculation issue when proposing jury instructions to be considered by the Court in the context of the facts to be submitted to the jury.

It is therefore

ORDERED that Defendant’s Motion for Summary Judgment (Docket No. 234) is denied.

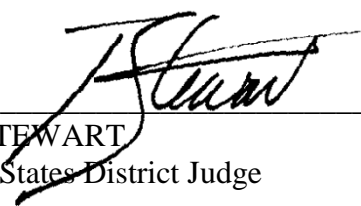
It is further

ORDERED that Plaintiff’s Cross-motion for Summary Judgment (Docket No. 242) is denied. Plaintiff and Defendant are directed to raise the issue of the proper damages calculation when proposing jury instructions.

The hearing scheduled for March 16, 2015, is stricken.

DATED March 9, 2015.

BY THE COURT:



TED STEWART
United States District Judge

² Docket No. 250, at 3.